Supreme Court, U.S.
FILED

No. 051187

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IN THE SUPREME COURT OF THE UNITED STATES

JOSHUA SAMUEL,

Petitioner,

v.

SUPERIOR MACHINE COMPANY OF SOUTH CAROLINA, INC.

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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QUESTIONS PRESENTED

1. **Whether the Court should consider all race discrimination claims under 42 U.S.C. 1981a mixed motive cases, precluding the use of the McDonnell Douglas Shifting Burden test at Summary Judgment.**

2. **Whether the Court should consider evidence of pretext as to the employer's stated reason for an adverse employment action to be evidence of discriminatory motive, pursuant to Reeves v. Sanderson Plumbing Products, Inc. 530 U.S. 133, 120 S.Ct. 2097 (2000).**

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Other Authorities

H.R.Rep. No. 102-40(I), at 46 (1991), reprinted in 1991 U.S.C.C.A.N. 549, 584) 21

OPINIONS BELOW

The Court of Appeals wrote an unpublished Opinion in this case, affirming based on the reasoning in the District Court Judge's Order entered on November 18, 2004. A copy of the unpublished Opinion is included in the Appendix, as is the Order of November 18, 2004 by Judge Harwell, United States District Court Judge.

JURISDICTION

On December 16, 2005, the Appeals Court for the Fourth Circuit affirmed the District Court's Order granting Summary Judgment to the Defendant in an unpublished opinion. This Court Has Jurisdiction under 28 U.S.C. 1254(1).

CONSTITUTIONAL PROVISIONS AT ISSUE

None.

STATE STATUTORY PROVISIONS AT ISSUE

The questions presented implicate the following provisions of the U.S. Code:
42 U.S.C. 2000e and 42 U.S.C. 1981a

STATEMENT OF THE CASE

Superior Machine Company of South Carolina, Inc, is located in Florence, South Carolina. Its principal line of business is the repair and fabrication of heavy industrial machinery. Superior employed (as of 2003) just under 150 persons in Florence, SC. The majority of the employees in the Florence plant are classified as either welders, riggers, or fitters. There were several different departments in the Superior Machine plant The Heavy Machine Shop, The Paper mill Repair Shop, Pump Shop, Shipping and Receiving shop, Planning, and Engineering. Samuel worked mainly in the Fabrication department, which consists of the Panel Shop and Heavy Fabrication.

The Defendant employs two types of employees, permanent and temporary. Employees are hired through a temporary agency (Spherion) and then offered permanent employment if they meet certain requirements. Mr. Miller, the plant manager, testified in order to go from a temporary employee to a permanent employee must show an ability to do the job, ability to be on time, and the ability to handle the work load.

Joshua Samuel (Petitioner) is an African American man. He has been a welder since about 1980. Samuel received a certification in welding from a technical college, gained experience working as a welder for construction companies like Daniels, BE&K, and NNI. Samuel worked in welding at H.B Robinson Nuclear plant in Hartsville, SC, before accepting a position with Superior Machine in 1986 as a welder. Samuel was employed with Superior (with some intermittent breaks in employment) until his termination in December 2001. In 1986, Samuel went to Superior Machine seeking employment. He filled out an employment application, but was told, upon filling out the application, that he would have to take and pass a welding test. Samuel did pass the test. However, After passing the test, Larry Miller, a white supervisor for Superior Machine, informed the Plaintiff that, although he would be hired for the job, his certification did not "mean" anything in the eyes of Superior's management. Samuel began to work as a welder, and performed well. He worked his way up through raises and good performance, from $6.00 per hour in 1986 to $12.00 per hour in 1997.

During the Samuel's employment he experienced incidents of racial harassment from a worker and later supervisor named Barry Hardee, a white male. Prior to 1994, Samuel and Hardee worked in the same shop but Hardee was not Samuel's supervisor. In January of 1993, Barry Hardee approached Samuel and showed him a list, which Hardee said indicated that Samuel was to be put under Hardee's direct supervision. Hardee, after showing Samuel the list, told Samuel that he "had him now." Rather than be transferred to a position directly subordinate to Mr. Hardee, Mr. Samuel agreed to take a voluntary layoff on January 14, 2003.

In December 1994, After having worked as a welder for other employers, Samuel re-applied for a position with Superior. He returned to work with Superior at a rate of $10.50 per hour. After returning to Superior in December of 1994, Samuel was assigned to a shop under the supervision of Charles Larrimore. Even though he was under Larrimore's direct supervision, Samuel occasionally came into contact with Hardee, as he was sent to Hardee's shop when needed. On just about each and every time that

Samuel was sent to work with Hardee, Hardee subjected Samuel to some type of racial harassment. Samuel, on many occasions, while working for Superior, reported Hardee's racist behavior to all of management including but not limited to management members, James Odom, Vaughn Williams, and Mr. Jackson. On several occasions the Plaintiff was told by Hardee, "you ain't learn how to weld yet boy." On one occasion, Barry Hardee showed Samuel a handful of pocket change and told Samuel that the change was money collected to support the Ku Klux Klan. Samuel, who was outraged, made a report of racial harassment to George Turner, a supervisory employee. Rather than address the issue, instead of taking any remedial action at all, Turner's reaction to the Samuel's report was to inform Samuel (as if he did not already know) that "Barry Hardee don't like blacks." Samuel has observed that he enjoyed working at Superior Machine, and would have considered it a good place to work if it were not for he racist work environment.

Samuel's wife had severe medical problems from 1998 (continuing even today), which included,

among other things, cancer. Samuel was absent some days in order to accompany her to her medical treatments. Samuel had taken time off only when there was no welding work to be done at the plant, and provided medical notes, substantiating the reason for his absences. Nonetheless, on May 11, 1998, he received a warning for not working required hours. Superior management told Samuel that the Doctor's notes meant nothing to them. With his wife's medical condition in a continuing downward spiral, Samuel received a second warning for absenteeism on October 8, 1998 (despite having a valid medical note to explain the absence). Superior Machine terminated Samuel in October 1998. Samuel then accepted a job with another company (as a welder) called Techno Steel for a time. Mr. Samuel then attempted to re-apply for a welding position with Superior Machine. He was informed that, at that time, Superior was not accepting applications for permanent positions. Samuel was advised to apply for a position with Superior through a temporary employment agency called Spherion.

Samuel applied and was accepted to work for

Superior Machine. He was returned to his prior post in the Summer of 1999, where his supervisor was, once again, Charles Larrimore. While working under Larimore, Samuel performed well, and was assured, by his supervisor that he was of great value to Superior, as a welder. Samuel was frustrated because, although Superior seemed to recognize his skill and value to the plant as a skilled welder, the Respondent had declined to allow him to become a permanent employee. Frustrated with the company's apparent refusal to accept him as a permanent employee for about two years, Samuel resigned on June 4, 2001.

On July 16, 2001, about six weeks after the June 4, 2001 resignation, Samuel did return to Superior Machine, and resumed his welding job. His employee file indicated that he was still a temporary employee, although it did not mention Spherion (the temporary agency) at all. After his return to work, Samuel was still under the supervision of Mr. Larrimore, as a welder.